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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH CARROLL FITZHUGH, JR., No. C 07-1091 RMW (PR)
Petitioner,)
v.) ORDER DENYING
JOHN MARSHALL, Warden,) CERTIFICATE OF
Respondent.) APPEALABILITY

17 Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to
18 28 U.S.C. § 2254. On February 12, 2009, the court granted respondent's motion to dismiss the
19 petition as untimely. Petitioner filed a timely notice of appeal and request for certificate of
20 appealability.

Upon the filing of a notice of appeal and a request for a certificate of appealability
(COA), the district court shall indicate which specific issue or issues satisfy the standard for
issuing a certificate, or state its reasons why a certificate should not be granted. See United
States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997) (citing 28 U.S.C. § 2253(c)(3)). After
reviewing the record, the court concludes that petitioner has not shown “that jurists of reason
would find it debatable whether the petition states a valid claim of the denial of a constitutional
right and that jurists of reason would find it debatable whether the district court was correct in its
procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, petitioner’s

1 request for a certificate of appealability is DENIED.

2 The clerk shall serve notice of this order forthwith to the United States Court of Appeal
3 and to the parties. See Fed. R. App. P. 24(a).

4 IT IS SO ORDERED.

5 Dated: 5/20/10

Ronald M. Whyte
RONALD M. WHYTE
United States District Judge